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FRISHAUF, HOLTZ, GOODMAN & CHICK, PC			COPPINS, JANET L	
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NEW YORK, NY 10001-7708			1626	
	•		DATE MAILED: 10/11/2006	

Please find below and/or attached an Office communication concerning this application or proceeding.

## Diffice Action Summary Diffice Action Summary		Application No.	Applicant(s)				
Janet L. Coppins Janet L. Co		10/647,023	MORI ET AL.				
The MAILING DATE of this communication appears on the cover sheet with the correspondence address — Period for Repty A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. Educations of them may be available under be previouse of 32 CPR 1.136(a), in to even, theorem, may a reply be limbly field * INO period for reply is specified above, the maintaine statistics provided will expire SIX(6) MONTHS from the malling date of this communication. * Failus to steply whitin the set or centeded period for reply will by statuse, cause the application to become ARANDONED (38 U.S. C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filled, may reduce any variety precision in the mailing date of this communication, even if timely filled, may reduce any variety precision in the control of the communication of the comm	Oπice Action Summary	Examiner	Art Unit				
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DETAILED ACTION

1. Claims 1-63 are pending in the instant application.

Information Disclosure Statement

2. Applicant's Information Disclosure Statements (IDS), filed December 1, 2003 and November 4, 2004, have been considered by the Examiner. Please refer to the signed copies of Applicant's PTO-1449 forms submitted herewith.

Election/Restrictions

3. Applicant's election with traverse of Group I, claims 1-54 and 59-63, in the reply filed on July 7, 2006, is acknowledged. Accordingly, claims 55-58 are withdrawn from consideration as being drawn to non-elected subject matter. Applicants' traversal is on the ground(s) that the Restriction Requirement is not of the type set forth in the MPEP, section 803.02.

Following Examination of Group I, the compounds of formula (I) appear to be directed to an allowable product. Pursuant to the procedures set forth in MPEP § 821.04(B), claims 55-58, directed to methods of use, previously withdrawn from consideration as a result of a restriction requirement, are hereby rejoined and fully examined for patentability under 37 CFR 1.104.

Because all claims previously withdrawn from consideration under 37 CFR 1.142 have been rejoined, the restriction requirement as set forth in the Office action mailed on August 9, 2006, is hereby withdrawn. In view of the withdrawal of the restriction requirement as to the rejoined inventions, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction

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requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See In re Ziegler, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

4. Accordingly, all claims are now pending in the application.

Claim Rejections - 35 USC § 112

- 5. The following is a quotation of the second paragraph of 35 U.S.C. 112: The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
- Claim 57 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing 6. to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants recite a method of treating a fungal infection, wherein the claimed compound is administered via injection, however it is unclear what route of administration is intended from the claim. The vague term "injection" covers many routes, and known routes of adminsistering anti-fungals include intramuscular, intravenous, intrathecal, intravitreal, intravaginal, subcutaneous, and sublingual. It is unclear from the claim itself which method Applicants are intending to encompass, and each of the above methods of injection requires a different formulation, concentration, etc which is dependent on the specific fungus being treated or prophylactic effect desired. Clarification is requested.

Objections

7. Claim 58 is objected to for being dependent on rejected base claim 57. Application/Control Number: 10/647,023

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Conclusion

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8. In Conclusion, claims 1-63 are all pending in the application, claims 57 stands rejected, and claim 58 is objected to. Claims 1-54 and 59-63 currently appear allowable over the prior art.

Telephone Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet L. Coppins whose telephone number is 571.272.0680. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane can be reached on 571.272.0699. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Janet L. Coppins September 26, 2006

> Joséph K. McKane SPE, Art Unit 1626